

**BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA**

Docket No. 2019-297-G

IN RE:

James B. Hamlett,
Complainant/Petitioner,

v.

Piedmont Natural Gas Company, Inc.
Defendant/Respondent.

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**PIEDMONT NATURAL GAS
COMPANY, INC.'S REPLY TO
PETITIONER'S RESPONSE AND
SUPPLEMENTAL RESPONSE TO
PIEDMONT'S MOTION TO DISMISS
COMPLAINT**

Pursuant to S.C. Code Ann. § 58-27-1990, S.C. Code Ann. Regs. 103-829 and 103-352, and applicable South Carolina law, respondent, Piedmont Natural Gas Company, Inc. ("Piedmont" or the "Company") hereby replies to *Petitioner's Opposition to Respondent's Motion to Dismiss Complaint* ("Initial Response") filed in the above-referenced proceeding on September 27, 2019 and Petitioner's *Supplemental Response to Opposition to Respondent's Motion to Dismiss Complaint* filed on October 7, 2019 ("Supplemental Response") (collectively, "Responses").

BACKGROUND

On September 11, 2019, Mr. Hamlett filed a complaint in the instant docket alleging that Piedmont took unreasonable and inappropriate actions with respect to a meter replacement at his residence. Petitioner's Complaint is focused on two primary issues: 1) Piedmont's ability to access a customer's home to perform a safety inspection; and 2) Piedmont's determination that Petitioner's water heater presented a safety risk.¹ Petitioner's complaint requested that the

¹ More specifically, Petitioner alleges that Piedmont engaged in an arbitrary and capricious "enforcement action" because the Company has not proved "a genuine safety violation existed with [Petitioner's] water heater." Initial Response at 1. Piedmont is unclear what Petitioner means by "enforcement action" as the phrase indicates that Piedmont has taken an adverse or penal action against Mr. Hamlett or his account. The Company does not engage in

Commission change its regulations to make safety inspections of personally-owned systems and equipment voluntary and at the request of the homeowner. Petitioner also requested that Piedmont reimburse him for the cost associated with replacing his water heater. The Company moved to dismiss the complaint on September 26, 2019, asserting that its actions were justified by the Commission's rules and regulations, as well as Piedmont's Service Regulations and internal policies, and that the Commission lacked jurisdiction to award damages. Thereafter, Petitioner filed his Initial Response, in which he expands upon the allegations in his Complaint to include assertions that Commission Rule 103-444 is written too broadly and that the Commission should narrow the scope of the rule to preclude Piedmont from entering his home.² Petitioner abandoned his request for reimbursement of the cost to replace his water heater.

Petitioner's Supplemental Response expands upon the argument that Piedmont should not be able to access his home in order to conduct a safety evaluation because property owners own the gas lines on their property and Piedmont's ownership of facilities ends at the meter. Petitioner contends that since account holders own and are responsible for repairing equipment and gas lines inside their home, that Piedmont is precluded from examining these facilities as part of a safety check when gas is turned on. Similar to his Initial Response, Petitioner's Supplemental Response improperly expands beyond the Complaint's allegations to include a request that the Commission answer various clarifying questions associated with the scope of Commission Rule 103-444. Piedmont responds to these assertions below.

"enforcement actions" nor has it taken any enforcement measures against Mr. Hamlett. The only action that Piedmont has taken is to place a Red Tag on Mr. Hamlett's water heater, indicating the existence of an unsafe condition.

² In requesting that the rule be narrowed, Petitioner appears to implicitly acknowledge that Piedmont was authorized by Rule 103-444 to enter his home in order to conduct a safety inspection.

ARGUMENT

Piedmont restates its denial of the allegations contained in the Complaint and repeats its request that the Complaint be dismissed pursuant to S.C. Code Ann. § 58- 27-1990 because the Complaint fails to adequately allege any violation of a Commission-jurisdictional statute or regulation, and a hearing in this case is not necessary for the protection of substantial rights. At all times relevant to this proceeding, Piedmont acted in accordance with the Commission's rules and regulations and the Company's own Service Regulations, policies and procedures.

As explained in detail in Piedmont's motion to dismiss, Piedmont performed a scheduled meter test and changed the meter at Petitioner's residence on August 6, 2019. The technician's comments on the work order (Exhibit 2 to Piedmont's motion to dismiss) state that during the mandatory safety inspection³ at Mr. Hamlett's premises, the technician observed (again)⁴ that the water heater was not vented properly and that it did not meet the specifications of the manufacturer. As a result, the technician tagged the water heater as unsafe.⁵ Rather than discontinuing service, which Piedmont was authorized to do, the technician, as a courtesy, gave the Hamlett's two weeks to either repair the venting or replace their water heater.

a. Right of Access

Mr. Hamlett's Responses continue to take issue with Piedmont's ability to access a customer's premises in order to conduct a safety check and to ensure that facilities connected to gas are functioning properly. He contends that the Company is somehow not authorized to enter

³ Commission Rule 103-483, and Company policy upon turning gas back on, requires that a safety inspection be performed anytime gas is turned on in order to ensure there are no gas leaks, and that appliances are operating and venting properly.

⁴ Piedmont's motion to dismiss also noted that in 2012, a technician had placed a Red Tag on the water heater at Mr. Hamlett's residence for the exact same reason that resulted it being red tagged on August 6, 2019. See Exhibits 5 and 6 to Piedmont's motion to dismiss.

⁵ A copy of the 2019 Red Tag is attached as Exhibit 3 to Piedmont's motion to dismiss.

his home in order to conduct a safety inspection because gas lines are owned by customers; not Piedmont. (Supplemental Response at 1).

In his Supplemental Response, Mr. Hamlett proffers a new argument for this proceeding, which is that Commission Rule 103-444 is written too vaguely and broadly, and thus, that the Commission should modify or clarify the scope of the rule. This argument was not raised in the complaint filed in the instant proceeding, and is therefore improperly before the Commission. Nevertheless, Piedmont restates its position as articulated in its motion to dismiss that both the Commission's Rules and Regulations and Piedmont's Service Regulations authorize Piedmont to access a customer's premises in certain circumstances, in particular, to conduct a safety check when turning gas back on. Specifically, Commission Rule 103-444 provides as follows:

Authorized agents of the gas system shall have the **right of access to premises supplied with gas service** at reasonable hours, for the purpose of reading meters, examining facilities and pipes, maintenance, repair, **observing the manner of using service and for any other purpose which is proper and necessary in the conduct of the gas system's business.** (emphasis added)

Such agents shall, upon request of a customer, produce proper identification and inform the customer of the purpose of necessary access to occupied premises.

Piedmont's Service Regulations also explicitly authorize Piedmont to access a customer's premises. Service Regulation No. 12 states:

The Company shall at all reasonable times have the **right of ingress to and egress from the premises of the Customer for any and all purposes connected with the provision of service.** The Company shall have the right, at its option and at its own expense, to place demand meters, pressure gauges, or other instruments on the premises of the Customer for billing, testing, or other purposes with respect to the Customer's service. (emphasis added)

Contrary to Hamlett's assertion that Piedmont has "nearly unlimited access to private property" Piedmont's right to access is limited to ensuring the provision of safe and reliable gas operations on behalf of the customers it serves. Both the rule and regulation limit Piedmont's right

to access a customer's premises to purposes associated with the provision of gas service. In this case, a Piedmont technician explained to Mr. Hamlett's wife that he needed to access the home in order to relight the water heater and perform a safety inspection, as required by Company policy, after having replaced the meter on the premises. Contrary to Mr. Hamlett's allegations, at no time did Piedmont represent or state that it owns the facilities within Mr. Hamlett's home. Piedmont acknowledges and agrees that its system ends at the meter, and that customers are responsible for the lines within their homes.

Notwithstanding the delineation of ownership rights amongst the facilities used to provide customers gas service, Piedmont, as the natural gas provider, has adopted the standard industry practice of confirming that equipment within a customer's home is functioning safely and correctly when gas service is interrupted for any reason. Were Piedmont to be denied access to a customer's home, the Company would have no way of determining if the provision of gas was functioning in a safe and reliable manner following such interruption in service. This is precisely why Commission Rule 103-444 provides Piedmont the right to access a customer's premises "for any [] purpose which is proper and necessary in the conduct of the gas system's business." The right is not unfettered. The right is limited to purposes associated with the provision of natural gas service.

The purpose of the Company's policies and the Commission's regulations regarding access to a customer's premises is wholly designed for the protection of the customer in his/her utilization of natural gas provided by the Company. As noted above, Piedmont's right of access is limited to that purpose and is a necessary attribute of Piedmont's ability to provide safe and reliable gas service. Its actions in this case have been fully compliant with the Commission's regulations. Piedmont would further comment that it would not provide service to Mr. Hamlett, or any

customer, without the ability to access the customer's premises to make sure the utilization of natural gas is safe.⁶ If Mr. Hamlett objects to this right of access, he has the choice to utilize another energy source for space or water heating. What Mr. Hamlett does not have the right to do is compel Piedmont (or the Commission) to change long-standing practices common in the natural gas utility industry designed for the express purpose of keeping Mr. Hamlett, his family, and tenants safe.

In summary, the focus of the Commission's rules and regulations is not on who owns the equipment being serviced; the focus is on granting Piedmont access necessary for ensuring the provision of safe and reliable service. Contrary to Mr. Hamlett's assertions, at no time did the Company have unauthorized access to Mr. Hamlett's premises. At all times relevant to this proceeding, the Company's access of the property was for a legitimate and justified reason, and within the scope of Commission Rule 103-444 and Service Regulation No. 12.

b. Piedmont was Justified in Determining that an Unsafe Condition Existed

Mr. Hamlett's Supplemental Response contends that Piedmont has not cited any building code or manufacturer specifications to support its assertion that the water heater was vented improperly. He also contends that Piedmont's "failure to follow through with the regulatory

⁶ See e.g., No. 1 of the Residential Customer Bill of Rights for South Carolina residents, which provides as follows:

As a general rule, ***you have the right*** to establish natural gas service where available if you meet the following requirements: a) provide satisfactory identification and credit worthiness, **b) provide necessary and reasonable access to your property**, **c) your utilization of the natural gas service does not pose a hazardous or dangerous condition**, and d) there is already natural gas service in your area. If there are no natural gas lines near your home, you may or may not have the right to have the lines extended to serve you. If the lines are extended to serve you, you may be required to pay part of the cost of the extension. If you have any questions about your right to natural gas service, you should contact the natural gas company serving your area.

(emphasis added). A copy of Piedmont's New Customer Guide, which sets forth the Customer Bill of Rights, is attached hereto as Exhibit 1.

enforcement action in 2012 for the exact same issue provides additional evidence that [Piedmont's] enforcement action is arbitrary and capricious in 2019.” (Supp. Response at 1).

First, while Mr. Hamlett is capable of obtaining, and possibly in possession, of the manual for his water heater, attached as Exhibit 2 is a copy of Whirlpool's Installation Instructions and Use and Care Guide. Furthermore, Piedmont notes that the International Mechanical Code and Section 624.1 of the International Fuel and Gas Code⁷ state that water heaters shall be installed in accordance with the manufacturer's installation instructions.

Regarding Mr. Hamlett's contention that Piedmont's actions in 2019 are somehow arbitrary and capricious because it did not follow up with Mr. Hamlett in 2012, Piedmont states as follows: Piedmont, as a natural gas provider, is responsible for ensuring the provision of safe and reliable gas service. It ensures that its facilities are functioning properly, as well as customers' facilities that are connected to gas, and notifies customers of situations that need to be corrected by appropriate maintenance/repair individuals. Piedmont is not in the business of, nor does it have the resources, to “police” customers' actions following notification of an unsafe condition.

When a customer has multiple gas appliances, the Company's policy is to only valve off the gas to the equipment with the unsafe condition. The Company generally does not follow back up with the customer after it red tags a piece of equipment as it is the customer's responsibility to take the appropriate corrective action and to contact Piedmont to reestablish service. By signing a red tag, the customer acknowledges that he/she has been made aware of the hazard/unsafe condition and that he/she understands the consequences of operating the equipment without making the necessary repairs or replacement. Per Piedmont policy, the Company advises the

⁷ Greenville, South Carolina has adopted the 2015 International Fuel Gas Code as an enforceable regulation governing fuel gas systems and gas-fired appliances. *See* Section 6-1(3) of the City of Greenville, South Carolina Code of Ordinances.

customer that the equipment should not be used or the tag removed until the hazard has been corrected.

In this case, the technician as a courtesy, and in an attempt to provide good customer service, did not valve off the equipment in 2012 because the husband was out of town and his wife and children would have been left without hot water. Had the technician left the water heater off and the customer or a contractor/plumber removed the tag and relit the water heater, Piedmont would not have known unless gas service was interrupted necessitating the Company to access the equipment again to follow its procedures when turning a gas meter back on. With respect to Mr. Hamlett's property, Piedmont's records indicate that service at the premise changed into other people's name six times since 2012 but the meter was never turned off which would have required the Company to access the equipment.⁸

c. Mr. Hamlett's Retaliation Claim

Lastly, in addition to focusing on Piedmont's right to access his premises, Mr. Hamlett's Responses make baseless and accusatory assertions that Piedmont, by noting that the same unit was red tagged in 2012, is somehow retaliating against him for filing a complaint.⁹ Mr. Hamlett's Initial Response includes representations that the property was tenant-occupied at the time the 2012 Red Tag was placed on Mr. Hamlett's water heater, and his Supplemental Response attaches various documentation purporting to demonstrate that he was not in Greenville during this time.¹⁰

First, Piedmont vigorously disputes any allegation or suggestion that the Company engaged in retaliatory or intimidating behavior. Piedmont's motion to dismiss simply lays out the facts and

⁸ Piedmont obtains a visual meter index reading on active meters when transferring service into another person's name.

⁹ See e.g., Initial Response at 2; Supp. Response at 2.

¹⁰ As an aside, Piedmont notes that neither the correspondence calling Mr. Hamlett for military duty from January 16, 2012 to February 12, 2012, nor the employment letter establish that he was not in Greenville on the date the 2012 Red Tag was placed on the water heater at his premises.

circumstances involving Mr. Hamlett's account and the water heater that is the subject of Mr. Hamlett's complaint. Nowhere in Piedmont's motion to dismiss does Piedmont indicate that it intended to take any adverse action against Mr. Hamlett. As set forth in Piedmont's motion to dismiss, Mr. Hamlett and his wife, Elizabeth Coker Hamlett, purchased the home in October of 2009. Contrary to the assertions in Petitioner's Supplemental Response, Piedmont's records show that the account associated with the Hamlett's property was active and in his and his wife's name from October 5, 2009 to June 15, 2012. Attached as Exhibit 3 are screenshots of Piedmont's Miscellaneous Action Information and Service Order History forms, which indicate that the account associated with the property was in the name of Mr. Hamlett and his wife from October 5, 2009 to June 15, 2012 and that during this time, on February 16, 2012, Mr. Hamlett called Piedmont to report a gas odor. Thus, as Piedmont originally stated, Mr. Hamlett was the account holder when the water heater was manufactured and installed at the premises without a permit and not to manufacturer specifications, as well as when Piedmont red tagged the water heater in 2012. In sum, the mere act of informing the Commission that Piedmont had observed and informed Mr. Hamlett, or his representative, that the water heater was vented improperly in 2012 does not constitute retaliation or intimidation and Piedmont will continue to vigorously dispute such allegations.

In light of these circumstances, and the findings of Piedmont's investigation that the same exact water heater was tagged in 2012, for the same reason, and was reconnected without being repaired, it can hardly be said that Piedmont's actions are "arbitrary and capricious," or that the Complaint contains an allegation that Piedmont violated any applicable statute or regulation relating to discontinuation of service.

III. CONCLUSION

The Complaint filed in this proceeding contains no allegation that Piedmont violated any applicable statute or regulation for which the Commission can grant relief, and a hearing in this case is not necessary for the protection of substantial rights. Therefore, pursuant to S.C. Code Ann. § 58-27-1990, this matter should be dismissed.

WHEREFORE, Piedmont moves the Commission to dismiss this matter with prejudice; and requests such other relief as the Commission deems just and proper.

This the 16th day of October, 2019.

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Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the attached is being served this date upon all of the parties to this docket electronically or by depositing a copy of the same in the United States Mail, First Class Postage Prepaid, at the addresses contained in the official service list in this proceeding.

This the 16th day of October, 2019.

/s/ Sloane K. O'Hare
Sloane K. O'Hare